

CHAPTER 23
DAIRY TRADE PRACTICES

[Appeared as Ch 16, 1973 IDR]
[Prior to 7/27/88, see Agriculture Department 30—Ch 25]

21—23.1(192A) Definitions.

“Additive variant.” The words “any additive variant of any dairy product,” as used in Iowa Code section 192A.1(1), shall be construed to include any product containing caseinate or sodium caseinate derived from milk.

“Delivery.” The process of transferring a product from one location to another. If the wholesaler services a stop two times in one day, two deliveries have been made whether or not merchandise is left at the stop.

“Equipment sales.” A lease with option to buy paid for within 36 months is a sale within the meaning of Iowa Code section 192A.1(7).

“First distributor.” Under Iowa Code section 192A.30, the word “processor” shall be construed to mean any processor or distributor that sells any processed dairy product or dairy products in Iowa, in the first instance.

“Methods of delivery.”

1. *“Full service”* includes securing the order, putting up the order, servicing the case and sometimes the storage cooler, making out the bill, accepting outdated merchandise, stamping merchandise and collecting (cash, check or extension of invoice for signature).

2. *“Modified drop”* includes putting up the order, putting the product in the storage cooler and preordering of merchandise. This procedure does not include checking outdated merchandise or the acceptance of outdated merchandise.

3. *“Drop service.”* The product is prearranged in the truck for each store. The product is put on the dock or the back room of the store. The merchandise is preordered. This procedure does not include checking outdated merchandise or the acceptance of outdated merchandise.

“Service time.” Time that can be allocated directly to a stop. This includes time for securing the order, putting up the order, servicing the case, stamping merchandise, collecting and all other functions performed during delivery.

“Stop.” Refers to a location. As used here, a stop is a retail food store.

21—23.2(192A) Schools, churches and other charitable institutions not operated for profit.

23.2(1) The exemption in Iowa Code section 192A.1(6) of schools, churches and other charitable institutions not operated for profit applies to both dairy products and equipment.

23.2(2) The exemption does not apply to a catering service or a fraternity buying group. The test is whether or not the business is done directly with the school, church or institution and not with a third person.

23.2(3) Whether or not an institution qualifies as a charitable institution not operated for profit and thus is exempt from chapter 192A is a matter of fact under the circumstances. It will depend on its origin, objects, charter and how it conducts its business. Membership organizations whose benefits accrue to the membership are not charitable institutions. Public institutions such as jails, county homes, mental health institutions, prisons, etc., are charitable organizations not operated for profit and exempt from the law.

This rule is intended to implement Iowa Code section 192A.1(5).

21—23.3(192A) Price differentials and discounts.

23.3(1) Iowa Code section 192A.3 applies to both wholesale and retail sale of dairy products.

23.3(2) Price differentials allowed under Iowa Code section 192A.3(1) must be cost-justified.

23.3(3) Central billing or group discounts must be cost-justified.

23.3(4) Differentials between name-brand dairy products and private label must be cost-justified.

23.3(5) A deviation filed to meet an equally low price of a competitor will continue only so long as the equally low price of a competitor exists. When the price of the competitor is changed, the deviation must be withdrawn.

23.3(6) Discounts and rebates to be allowed must be cost-justified.

23.3(7) Discounts shall be determined on the basis of units delivered so far as ice cream is concerned and on dollar amounts so far as milk is concerned.

This rule is intended to implement Iowa Code sections 192A.3 and 192A.4.

21—23.4(192A) Gifts and promotions.

23.4(1) The general effect of Iowa Code sections 192A.13, 192A.14 and 192A.15 is to:

a. Prohibit processors and distributors from extending payments and gifts that may buy or retain accounts.

b. Absolutely prohibit certain types of gifts and sales promotion practices.

c. Specify promotional types of activities that are lawful.

23.4(2) “Free goods,” as defined in Iowa Code section 192A.13, means one or more items of personal property:

a. That is given gratuitously without increase in the regular purchase price of the dairy products it is offered with, or that is given gratuitously without charging the purchaser an additional sum over the regular purchase price of the dairy product it is offered with, or

b. For which the wholesaler does not receive monetary consideration from any recipient. For example, it is unlawful for a processor or distributor to:

(1) Give a retailer a free, extra quantity of selected dairy products upon purchasing of a certain volume of product.

(2) Supply a retailer with free merchandise to be given away to the consumer with the consumer’s purchase of selected dairy products (balloons, pencils, coins, food products, potholders, and similar items). However, there is no prohibition against a wholesaler supplying sample food products which can reasonably be expected to be consumed on the retailer’s premises.

(3) Supply a retailer with free merchandise to be sold in combination with or on the condition of a consumer’s purchase of dairy products.

(4) Run a contest among its retail store accounts and give a prize to retailers for increases in volume of sales.

(5) Reimburse a retailer for the cost of merchandise or other items of value given away by a retailer for promotional purposes.

(6) Furnish retailers with free merchandising aids, such as tote bags for milk unless packaged at plant, recipe booklets, or potholders.

(7) Furnish retailers with the service of store personnel whose wages are paid by the wholesaler.

(8) Rescinded IAB 9/16/92, effective 10/21/92.

(9) Furnish equipment for a promotion which is predominantly commercial in nature, run at a retail store location and incidental to the retailer’s course of business except as provided in 23.4(2)“c”(3).

(10) Furnish dispensers, freezers, etc., on the retail route without charge except as provided in 23.4(2)“c”(3).

c. Transactions allowed by statute may include, but are not limited to:

(1) The furnishing of point of sale advertising material made of paper, cardboard or other material not of a permanent nature that remains inside retailer locations for use in the promotion of products of the wholesaler.

EXAMPLES: Advertising display material such as picture signs or balloons with wholesaler’s name, unprinted menu forms advertising the dairy’s products but not including creamers or permanent wall-type menu board signs.

(2) Hostesses or demonstrators at any retailer’s location to promote the products of the wholesaler, processor or distributor may also use equipment incidental to the function of the hostesses or demonstrators, such as equipment used for storage or for display for sale.

(3) The lending of equipment to a retailer for a period not longer than two consecutive weeks per month for display and sale of the processor's or distributor's products if the equipment is mounted on wheels and designed for consumer access on all sides and has a capacity of less than 15 cubic feet. As used in this subparagraph, "month" means any consecutive 30-day period.

(4) The advertising by a wholesaler of products through any advertising media selected which does not involve allowances or payment for furnishing of other property to persons purchasing such products in a manner prohibited by this rule.

EXAMPLES: Newspaper, radio or television advertising and printed material, such as fliers, which only advertise the dairy and do not identify any retailer. Clock advertising signs are generally permitted.

(5) Advertising allowances which do no more than reimburse a retailer for costs in advertising the wholesaler's selected dairy products. Payments must be in the form of reimbursement and not paid in advance.

EXAMPLES: A dairy may pay a retailer for only that portion which advertises the dairy's products. A dairy cannot pay national line rates if local advertising rates are lower.

This rule is intended to implement Iowa Code sections 192A.13, 192A.14, and 192A.15.

21—23.5(192A) Consumption on the sale premises.

23.5(1) The provision in Iowa Code section 192A.15 "...to be consumed on the sale premises" means that at the retail store the dairy products given away must be in such form and quantity as they would, in fact, be consumed on the premises and, when given away on the retail route at the home of the prospective purchaser, shall not exceed one quart of milk and the smallest sample carton produced of one other product.

23.5(2) Iowa Code section 192A.15 is also interpreted to mean that a dairy may also use equipment incidental to giving away its products. The dairy must conspicuously display that the dairy—not the retailer—is giving away the product.

This rule is intended to implement Iowa Code section 192A.15.

21—23.6(192A) Equipment.

23.6(1) Six percent annual interest means not less than 6 percent interest on the unpaid balance on a declining balance. Any higher statutory rate is permitted.

23.6(2) The minimum selling price on new equipment is cost plus transportation and installation cost plus 6 percent markup. If sold on a conditional sales contract, the minimum interest to be added is 6 percent interest on the unpaid balance on a declining balance. Any sale under this rule requires a 10 percent down payment.

23.6(3) When a sale is reported, copy of the conditional sales contract or bill of sale and recording or filing number in the county where the equipment is located is required to be attached to the report.

23.6(4) Failure to collect or repossess on a conditional sale would be in violation of the law.

23.6(5) Sale must be reported within 72 hours after installation.

This rule is intended to implement Iowa Code section 192A.11.

21—23.7(192A) Loan guide. Any account where any balance of the purchase price is due the processor, distributor, or broker, as set forth in Iowa Code sections 192A.10 and 192A.16, for 45 days or more shall be interpreted by the department as a loan and violation per se of the statute.

This rule is intended to implement Iowa Code sections 192A.10 and 192A.16.

21—23.8(192A) Price filing guide.

23.8(1) Under Iowa Code section 192A.7, new prices, whether lower or higher, shall be filed with the secretary of agriculture five days prior to the effective date of the price change. Nothing in this rule shall abrogate the provisions of section 192A.7.

23.8(2) Prices to be filed include processor and distributor prices to retailers, retail outlets, wholesalers, jobbers, and distributors.

23.8(3) Promotional discounts, promotional rebates or any other programs that give a special incentive offered to a retailer are changes in the wholesale price and must be filed with the department.

23.8(4) All promotional filings filed with the department are to be broken down on a monthly basis (either a calendar month or a one-month billing period) listing the dairy products offered, length of time the promotion can be run, and the terms and conditions which the distributor, wholesaler or retailer must meet to qualify for said promotion, if a condition is required.

This rule is intended to implement Iowa Code section 192A.7.

21—23.9(192A) Permits required. A person, processor or wholesale distributor selling dairy products in Iowa shall first obtain a permit from the Iowa department of agriculture and land stewardship. A person wishing a permit to sell dairy products in Iowa shall make application to the department on forms provided by the department. Failure to provide all pertinent information requested by the department shall be grounds for refusing to grant the permit.

This rule is intended to implement Iowa Code section 192A.30.

21—23.10(192A) Permit fees.

23.10(1) The person holding title to dairy products at the time of “first sale” in Iowa shall be responsible for paying permit fees to the secretary of agriculture. However, the secretary may agree to accept an agreement between a processor and a distributor for someone other than the titleholder at the time of “first sale” to be responsible for the payment of fees.

23.10(2) Under Iowa Code section 192A.30, fees on ice cream mix, cottage cheese and ice milk mix will be based on the milk which was processed to make the ice cream mix, cottage cheese and ice milk mix. The fee on novelties sold within the state will be based on a formula that three dozen novelties is the equivalent of a gallon of ice cream.

For the purpose of administering and enforcing Iowa Code chapter 192A, the person responsible for fees shall pay to the secretary permit fees in an amount of 3.5 mills per hundredweight on milk and 2.1 mills per gallon on ice cream.

This rule is intended to implement Iowa Code section 192A.30.

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